

Message Text

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ORIGIN L-03

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DRAFTED BY L/EA:PMNORTON:MAD
APPROVED BY L/EA:PMNORTON
EA/J - MR. FEATHERSTONE
USIA/IGC - MR. DUNAWAY (SUBSTANCE)
-----117272 290451Z /12
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FM SECSTATE WASHDC
TO AMEMBASSY TOKYO

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E.O. 11652: NA

TAGS: MARR, PFOR, JA

SUBJECT: VOA OKINAWA TAX ISSUE

REFS: (A) TOKYO 8259; (B) TOKYO 9560

1. DEPARTMENT RECORDS INDICATE THAT USG WAS WELL AWARE DURING REVERSION NEGOTIATIONS OF THE POTENTIAL FOR PROBLEMS CONCERNING THE STATUS OF VOA OKINAWA AFTER REVERSION. SEVERAL DRAFTS WERE PREPARED FOR A DETAILED AGREEMENT WITH THE GOJ ON THIS SUBJECT. IT WAS ONLY AT THE LAST MINUTE, HOWEVER, THAT THE GOJ AGREED TO A CONTINUED VOA PRESENCE ON OKINAWA AFTER REVERSION. THERE WAS NOT TIME FOR A DETAILED AGREEMENT ON THE VOA'S PRIVILEGES AND IMMUNITIES, NOR DID IT APPEAR POLITICALLY LIKELY THAT GOJ WOULD BE ABLE TO NEGOTIATE SUCH AN AGREEMENT ANYWAY. THE U.S. SETTLED FOR ARTICLE VIII OF THE REVERSION AGREEMENT, WHICH PROVIDES THAT OPERATION SHALL BE QUOTE IN ACCORDANCE WITH THE LIMITED OFFICIAL USE

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ARRANGEMENTS TO BE CONCLUDED BETWEEN THE TWO GOVERNMENTS UNQUOTE. THERE APPEARS TO HAVE BEEN LITTLE OR NO DISCUSSION OF THE PRIVILEGES AND IMMUNITIES QUESTIONS AT THE TIME AND SPECIFIC ARRANGEMENTS WERE NEVER CONCLUDED. (SCHMITZ CONFIRMS THIS ACCOUNT.)

2. IT SEEMS CLEAR TO THE DEPARTMENT, HOWEVER, THAT GOJ'S

AGREEMENT TO ALLOW VOA TO CONTINUE TO OPERATE FOR FIVE YEARS IMPLICITLY ENTAILED ALLOWING VOA TO OPERATE UNDER THE SAME CONDITIONS AS THOSE UNDER WHICH IT HAD BEEN OPERATING PRIOR TO REVERSION, I.E., ON A TAX-EXEMPT BASIS. IF IT WAS INTENDED THAT THE FACILITIES WOULD HAVE TO BEAR MILLIONS OF DOLLARS OF UNPRECEDENTED TAXES, THE AGREEMENT SHOULD HAVE SAID SO. NORMALLY, IF THERE IS NO SPECIFIC GRANT OF PRIVILEGES AND IMMUNITIES, IT MAY BE INFERRED THAT NONE HAVE BEEN GRANTED. UNDER THE CIRCUMSTANCES, HOWEVER, WE BELIEVE THE INFERENCE SHOULD BE THE OTHER WAY.

3. VOA FACILITY SHOULD ALSO BE CONSIDERED AS COMING UNDER THE RUBRIC OF SOVEREIGN IMMUNITY. IT IS A USG FACILITY PERFORMING FUNCTIONS WHICH ARE CLEARLY OF A GOVERNMENTAL NATURE PURSUANT TO AN INTERNATIONAL AGREEMENT. FACT THAT THE VOA FACILITY DOES NOT HAVE DIPLOMATIC STATUS (MOFA POSITION PARA 1, REF A) IS NOT, THEREFORE, CONCLUSIVE.

4. EMBASSY SHOULD BE AWARE THAT GOJ'S RECEPTIVITY TO THESE ARGUMENTS MAY BE ADVERSELY AFFECTED BY TAX CASE LAST YEAR INVOLVING JAPANESE URANIUM IN TENNESSEE. USG HAD INDUCED GOJ TO GET JAPANESE UTILITY COMPANIES TO BUY ENRICHED URANIUM FROM OAK RIDGE FACILITIES. IN ORDER TO BOLSTER CURRENT U.S. BALANCE-OF-PAYMENTS POSITION, SALE AND TRANSFER OF TITLE HAD BEEN IMMEDIATE. FOR TECHNICAL REASONS, HOWEVER, ACTUAL URANIUM REMAINED IN TENNESSEE LIMITED OFFICIAL USE

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WHERE LOCAL AUTHORITIES ATTEMPTED TO TAX IT. BECAUSE PROPERTY WAS PRIVATE AND COMMERCIAL IN NATURE, USG INDICATED THAT SUGGESTION OF SOVEREIGN IMMUNITY PROBABLY WOULD NOT BE ISSUED, AND JAPANESE UTILITIES EVENTUALLY SETTLED CASE BY PAYING SEVERAL MILLIONS OF DOLLARS. FACTS ARE BY NO MEANS PRECISELY APPPOSITE HERE (VOA, AS NOTED, IS CLEARLY A USG FACILITY PERFORMING GOVERNMENTAL FUNCTIONS, WHILE URANIUM WAS LEGALLY PRIVATE PROPERTY), BUT THE MEMORY MAY STILL RANKLE GOJ.

5. IT IS NOT CLEAR FROM REFTELS WHAT LOCAL TAXES MIGHT BE LEVIED ON VOA EMPLOYEES. THOSE EMPLOYEES ARE EXEMPT FROM NATIONAL INCOME TAX UNDER ARTICLE 21 OF THE DOUBLE TAXATION TREATY OF 1971. THEY PRESUMABLY PARTAKE OF SAME IMPLIED IMMUNITIES FROM TAXATION AS FACILITY ITSELF (PARA 2), BUT MORE SPECIFIC INFORMATION WOULD BE NECESSARY BEFORE FIRM VIEW COULD BE GIVEN ON THIS POINT. VANCE

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Message Attributes

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Control Number: n/a
Copy: SINGLE
Sent Date: 28-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Source: CORE
Document Unique ID: 00
Drafter: PMNORTON:MAD
Enclosure: n/a
Executive Order: N/A
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Film Number: D770231-0800
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